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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,557	07/20/2001	Jean M. Beaupre	END-778	8228
27777	7590	04/11/2006	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			DAVIS, DANIEL J	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/909,557

Applicant(s)

BEAUPRE, JEAN M.

Examiner

D. Jacob Davis

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-27, 29 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 24 and 32 is/are rejected.
- 7) ☒ Claim(s) 25-27, 29, 33 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

Claims 23, 24 and 32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5-9 and 17-22 of U.S. Patent No. 6,436,115. Although the conflicting claims are not identical, they are not patentably distinct from each other. The claims of the '115 patent fail to recite a node and a central ridge. The concave surface of the ridge may have the same or a different width as the convex surface. Therefore, inherently there is a ridge. It would have been obvious to one of ordinary skill in the art to place a node at the distal end of the rod and the proximal end of the end effector to maximize vibrations at the distal end of the effector and to minimize vibrations in the handle. Additionally, a "node" is based upon the intensity and frequency of the vibrations applied.

Claims 23, 24 and 32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5, 9, 10 and 17-22 of U.S. Patent No. 6,328,751. Some claims of the '751 patent fail to recite a node and a central ridge. The concave surface of the ridge may have the same or a different width as the convex surface. Therefore, inherently there is a ridge. It would have been obvious to one of ordinary skill in the art to place a node at the distal end of the rod and the proximal end of the end effector to maximize vibrations at the distal end of the effector

Art Unit: 3733

and to minimize vibrations in the handle. Additionally, a "node" is based upon the intensity and frequency of the vibrations applied.

Claims 23, 24 and 32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 10 and 18 of U.S. Patent No. 6,309,400. Some claims of the '400 patent fail to recite a node and a central ridge. The concave surface of the ridge may have the same or a different width as the convex surface. Therefore, inherently there is a ridge. It would have been obvious to one of ordinary skill in the art to place a node at the distal end of the rod and the proximal end of the end effector to maximize vibrations at the distal end of the effector and to minimize vibrations in the handle. Additionally, a "node" is based upon the intensity and frequency of the vibrations applied.

Allowable Subject Matter

Claims 25-27, 29, 33 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Jacob Davis whose telephone number is (571) 272-4693. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJD



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER